

§ 80.1290

and how an alternative calculation to the calculation specified in § 80.1280 produces a more representative benzene baseline value. Upon consideration of the submitted information, EPA may approve a benzene baseline for such a refinery.

(e) EPA will notify the refiner of approval of the refinery's benzene baseline or any deficiencies in the application. However, except for applications submitted in accordance with paragraph (d) of this section, the refinery's benzene baseline application may be considered approved 60 days after EPA's receipt of the baseline application, subject to paragraph (f) of this section.

(f) If at any time the baseline submitted in accordance with the requirements of this section is determined to be incorrect, EPA will notify the refiner of the corrected baseline.

§ 80.1290 How are standard benzene credits generated?

(a) The standard credit averaging periods are the calendar years beginning January 1, 2011, or beginning January 1, 2015 for small refiners approved under § 80.1340.

(b) [Reserved]

(c)(1) The number of standard benzene credits generated shall be calculated annually for each applicable averaging period according to the following equation:

$$SC_y = \left[\frac{0.62 - B_{avg,y}}{100} \right] \times V_y$$

Where:

SC_y = Standard credits generated in year y (gallons benzene).

$B_{avg,y}$ = Annual average benzene concentration for year y (volume percent benzene), per § 80.1238.

V_y = Total volume of gasoline produced or imported in year y (gallons).

(2) No credits shall be generated unless the value SC_y is positive.

(d) Standard benzene credits calculated in accordance with paragraph (c) of this section shall be expressed to the nearest gallon. Fractional values shall be rounded down if less than 0.50, and rounded up if greater than or equal to 0.50.

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§ 80.1295 How are gasoline benzene credits used?

(a) *Credit use.* (1) Gasoline benzene credits may be used to comply with the gasoline benzene standard of § 80.1230(a) provided that—

(i) The gasoline benzene credits were generated according to §§ 80.1275 or 80.1290.

(ii) The recordkeeping requirements for gasoline benzene credits under § 80.1350 are met.

(iii) The gasoline benzene credits are correctly reported according to §§ 80.1352 and 80.1354.

(iv) The conditions of this section are met.

(2) Gasoline benzene credits generated under §§ 80.1275 and 80.1290 may be used interchangeably in all credit use scenarios, subject to the credit life provisions specified in paragraph (c) of this section.

(3) Gasoline benzene credits may be used by a refiner or importer to comply with the gasoline benzene content standard of § 80.1230(a), may be banked by a refiner or importer for future use or transfer, may be transferred to another refinery or importer within a company (intracompany trading), or may be transferred to another refiner or importer outside of the company.

(b) *Credit transfers.* (1) Gasoline benzene credits obtained from another refinery or importer may be used to comply with the gasoline benzene content requirement of § 80.1230(a) provided the following conditions are met:

(i) The credits are generated and reported according to the requirements of this subpart, and the transferred credits have not expired, per paragraph (c) of this section.

(ii) Any credit transfer takes place no later than the last day of February following the calendar year averaging period when the credits are used.

(iii) The credit has not been transferred more than twice. The first transfer by the refinery or importer that generated the credit may only be made to a refiner or importer that intends to use the credit; if the transferee cannot use the credit, it may make the second, and final, transfer only to a refiner or importer that intends to use or to terminate the credit. In no case may a

credit be transferred more than twice before being used or terminated.

(iv) The credit transferor has applied any gasoline benzene credits necessary to meet its own annual compliance requirements (including any deficit carried forward, pursuant to § 80.1230(c), if applicable) before transferring any gasoline benzene credits to any other refiner or importer.

(v) The credit transferor does not create a deficit as a result of a credit transfer.

(vi) The transferor supplies records to the transferee indicating the year the gasoline benzene credits were generated, the identity of the refiner (and refinery) or importer that generated the gasoline benzene credits, and the identity of the transferring entity if it is not the same entity that generated the gasoline benzene credits.

(2) In the case of gasoline benzene credits that have been calculated or created improperly, or that EPA has otherwise determined to be invalid, the following provisions apply:

(i) Invalid gasoline benzene credits cannot be used to achieve compliance with the gasoline benzene content requirement of § 80.1230(a), regardless of the transferee's good-faith belief that the gasoline benzene credits were valid.

(ii) The refiner or importer that used the gasoline benzene credits and any transferor of the gasoline benzene credits must adjust their credit records, reports, and compliance calculations as necessary to reflect the proper gasoline benzene credits.

(iii) Any properly created gasoline benzene credits existing in the transferor's credit balance following the corrections and adjustments specified in paragraph (b)(2)(ii) of this section must first be applied to correct the invalid transfers to the transferee, before the transferor uses, trades or banks the gasoline benzene credits.

(c) *Credit life.* (1)(i) Early credits, per § 80.1275, may be used for compliance purposes under § 80.1240(a) for any of the following annual averaging periods: 2011, 2012, 2013.

(ii) Early credits, per § 80.1275, may be used for compliance purposes under § 80.1240(a) by small refiners approved under § 80.1340 for any of the following averaging periods: 2015, 2016, 2017.

(2)(i) Standard credits, per § 80.1290, may be used for compliance purposes under § 80.1240(a) within five years from the year they were generated, except as noted under paragraph (c)(2)(ii) of this section. Example: Standard credits generated during 2011 may be used to achieve compliance under § 80.1240(a) for any calendar year averaging period prior to the 2017 averaging period.

(ii) Standard credits, per § 80.1290, may be used for compliance purposes under § 80.1240(a) within seven years from the year they were generated if traded to and ultimately used by a small refiner approved under § 80.1340. Example: Standard credits generated in 2011 may be used to achieve compliance under § 80.1240(a) for any calendar year averaging period prior to the 2019 averaging period if traded to and ultimately used by a small refiner approved under § 80.1340.

(d) *Deficit provision limitation.* A refiner or importer possessing gasoline benzene credits must use all gasoline benzene credits in its possession before applying the benzene deficit provisions of § 80.1230(c).

HARDSHIP PROVISIONS

§ 80.1334 What are the requirements for early compliance with the gasoline benzene program?

(a)(1) A refinery may comply with the benzene requirements at § 80.1230 for its RFG and/or conventional gasoline (CG) prior to the 2011 compliance period if it applies for this early compliance option as specified in paragraph (b) of this section, and is approved by EPA.

(2) Only refineries that produce gasoline by processing crude and/or intermediate feedstocks through refinery processing units may apply for this early compliance option.

(b) Refiners must submit an application in order to be considered for early compliance as described in this section.

(1) Applications for early compliance as described in this section must be submitted to EPA by December 31, 2007.

(2) Applications must be sent to: U.S. EPA, NVFEL-ASD, Attn: MSAT2 Early Compliance, 2000 Traverwood Dr., Ann Arbor, MI 48105.